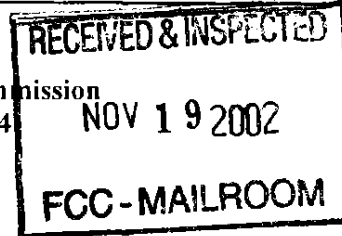


Before the
Federal Communications Commission
Washington, DC 20554



In the Matter of)
Request for Waiver)
St. Helen School)
Howard Beach, New York)
Federal-State Joint Board on)
Universal Service)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File Nos. SLD-172423, 172425

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER

Adopted: November 15, 2002

Released: November 18, 2002

By the Wireline Competition Bureau:

1. Before the Wireline Competition Bureau is a Request for Waiver by St. Helen School (St. Helen), Howard Beach, New York.¹ St. Helen requests a waiver of the filing deadline of October 28, 2001 for filing FCC Forms 486 in Funding Year 2001 of the schools and libraries universal service support mechanism.² For the reasons set forth below, the Request for Waiver is denied.

2. The Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) administers the schools and libraries support mechanism under the direction of the Commission.³ After an applicant for discounted services under the schools and libraries support mechanism has entered into agreements for eligible services with one or more service providers, it must file with SLD an FCC Form 471

¹ Letter from Anne Badalamenti, St. Helen School, to Federal Communications Commission, filed April 12, 2002 (Request for Waiver).

² Request for Waiver. In prior years, Funding Year 2001 was referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus the funding period that began on July 1, 2001 and ended on June 30, 2002, is now called Funding Year 2001. The funding period that began on July 1, 2002 and ends on June 30, 2003 is now known as Funding Year 2002, and so on.

Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998).

application.' The FCC Form 471 notifies SLD of the services that have been ordered and supplies an estimate of funds needed to cover the discounts to be given for eligible services.⁵ SLD then issues a funding commitment decision letter indicating the discounts, if any, to which the applicant is entitled. After the funding year begins and the discounted service commences: the approved recipient of discounted services submits to SLD an FCC Form 486, which indicates that the service has begun and specifies the service start date.⁶ After receiving the FCC Form 486, SLD will accept invoices from the service provider and issue disbursements to the provider in cumulative amounts up to the amount of the discount awarded.' Under the "120 day rule," an applicant must submit its FCC Form 486 for a service no later than 120 days after the commencement of the service or the issuance of SLD's funding decision, whichever is later.' If an applicant files its FCC Form 486 after this 120 day period, the date 120 days before the filing of the FCC Form 486 becomes the service start date for funding purposes.⁹

3. With the passage of the Children's Internet Protection Act (CIPA), Congress amended section 254 of the Act, imposing new conditions on schools that "hav[e] computers with Internet access" and request discounted services under the schools and libraries universal service support mechanism.¹⁰ Under section 254(h)(5), no school, except for schools that seek only discounts on telecommunications services: may receive universal service discounts unless the authority with responsibility for administration of the school makes certain certifications, and ensures the use of computers with Internet access in accordance with the certifications."

4. Congress established the conditions on the use of computers with Internet access in two separate acts, CIPA, which added section 254(h)(5) (establishing certification requirements for schools) and (h)(6) (establishing similar requirements for libraries), and the Neighborhood Children's Internet Protection Act (NCIPA), which added section 254(l)

⁵ See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 371).

² 47 C.F.R. § 54.504(c)

⁶ Schools and Libraries Universal Service, Receipt of Service Confirmation Form, OMB 3060-0853 (July 2001) (FCC Form 486); Instructions for Completing the Schools and Libraries Universal Service, Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 (July 2001) (Form 486 Instructions). In addition, an early filing option exists for Funding Year 2001 applicants whose services begin on or before October 28, 2001 and for applicants in subsequent funding years whose services begin on or before July 1 of the funding year. See FCC Form 486.

See FCC Form 486; Form 486 Instructions.

⁸ See Form 486 Instructions at 8-13

⁹ *Id.*

¹⁰ 47 U.S.C. § 254(h)(5). Section 254(h)(6) applies the same requirements to libraries. However, as noted below, this latter section was recently found to be unconstitutional. See *infra*, note. 24.

¹¹ 47 U.S.C. §§ 254(h)(5)(A), (h)(5)(A)(ii). Hereinafter we will refer collectively to all of the persons specified in the statute as responsible for making these certifications on behalf of participating schools and libraries as "entities."

(establishing additional requirements for both schools and libraries).¹² Under section 254(h)(5), which governs schools, applicants are required to certify that they are enforcing a policy of Internet safety as defined in NCIPA, and that their policy of Internet safety also includes the use of a “technology protection measure,” colloquially referred to as a software filter, that is in accordance with requirements specified in the CIPA provisions.¹³ Under NCIPA, codified at 254(h)(1), schools are required to adopt and implement an Internet safety policy that addresses (1) access by minors to inappropriate material on the Internet, (2) the safety and security of minors when using electronic communications, (3) unauthorized access, (4) unauthorized disclosure, use, and dissemination of personal identification information regarding minors; and (5) measures designed to restrict minors’ access to material harmful to minors.¹⁴

5. To implement these new provisions, the Commission issued the *CIPA Order*, which, *inter alia*, added new certifications for CIPA and NCIPA to the FCC Form 486 beginning in Funding Year 2001.¹⁵ In cases of consortium applicants, the Commission put the certifications on a new FCC Form 479, which must be completed by each of the consortium members and then collected and retained by the consortium leader.¹⁶ The Commission also amended its rules, adding the CIPA requirements at section 54.520.¹⁷

6. In accordance with CIPA’s requirement that applicants in Funding Year 2001 make their certifications within 120 days of the start of the funding year, the Commission added an additional deadline to the normal 120 day rule for FCC Forms 486. Under CIPA, Funding Year 2001 applicants were required to **file** their FCC Forms 486 by no later than October 28, 2001 unless their service began after that date or a funding commitment decision letter issued after that date.* A Funding Year 2001 applicant with a funding commitment decision letter who failed to meet the October 28, 2001 deadline could obtain discounts only for services received on or after the date that its FCC Form 486 was postmarked.”

¹² See Neighborhood Children’s Internet Protection Act (NCIPA), Pub. L. 106-554 §§ 1731 *et seq.*

¹³ 47 U.S.C. §§ 254(h)(5), 254(h)(6). These software filters are designed to block access to Internet sites containing sexually explicit or otherwise objectionable material. See *American Library Association, Inc. v. United States*, Nos. CIV.A. 01-1303, CIV.A. 01-1322, 2002 WL 1126046, *23-26 (E.D. Penn. May 31, 2002).

¹⁴ See NCIPA, Pub. L. 106-554 § 1732, codified at 47 U.S.C. § 254(l).

¹⁵ See *Federal-State Joint Board on Universal Service, Children’s Internet Protection Act*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 8182 (2001) (**CIPA Order**); 47 C.F.R. § 54.520.

¹⁶ *CIPA Order*, 16 FCC Rcd at 8194, para. 25.

¹⁷ 47 C.F.R. § 54.520.

¹⁸ 47 U.S.C. §§ 254(h)(5)(E), 254(h)(6)(E); **CIPA Order**, 16 FCC Rcd at 8188-89, 8191, paras. 10, 18.

¹⁹ See Form 486 Instructions at 9.

7. St. Helen was granted funding for 8 Funding Request Numbers (FRNs) in Funding Year 2001, including requests for telecommunications and Internet access services.²⁰ The services requested in these FRNs all began before October 28, 2001.²¹ St. Helen filed Funding Year 2001 FCC Forms 486 for all but two of its funding requests prior to the October 28, 2001 deadline.²² On January 8, 2002, St. Helen submitted FCC Forms 486 for the remaining two requests, FRNs 666150, which sought discounted telecommunications service, and 666151, which sought discounted Internet access.²³ On February 13, 2002, SLD issued Form 486 Notification Letters on these two requests indicating that the service start date was being adjusted to January 8, 2002 because of the CIPA deadline.²⁴ Once SLD adjusts the services start date, it will not pay for services delivered prior to that time.²⁵ As a result, St. Helen was not eligible for those services that it received prior to January 8, 2002. St. Helen now requests a waiver from the October 28, 2001 deadline and so that it may receive discounts for the period it received services prior to January 8, 2002 in connection with these two requests.²⁶ St. Helen argues that the mistake was due to illness of St. Helen's staff person and the confusion resulting after the events of September 11, 2001.²⁷

8. We find that the request for a waiver must be denied. Although the Commission has authority to waive regulatory requirements, it does not have authority to waive a requirement imposed by statute.²⁸ The October 28, 2001 deadline for CIPA certifications in Funding Year

²⁰ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Anne Badalamenti, St. Helen School, dated July 23, 2001 (Funding Commitment Decision Letter), at 6-8.

²¹ See Funding Commitment Decision Letter: FCC Form 471, St. Helen School, filed January 8, 2001 (St. Helen Form 471). Specifically, all services began on July 1, 2001. *Id.*

²² See Request for Waiver at 1.

²³ FCC Form 486, St. Helen School, Funding Request Number 666150, filed January 8, 2002; FCC Form 486, St. Helen School, Funding Request Number 666151, filed January 8, 2002; see also Funding Commitment Decision Letter, at 8.

²⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Anne Badalamenti, St. Helen School, Form 486 No. 172423, dated February 13, 2002; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Anne Badalamenti, St. Helen School, Form 486 No. 172425, dated February 13, 2002.

²⁵ See Form 486 Instructions at 9.

²⁶ Request for Waiver.

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²⁷ Request for Waiver at 1-2.

²⁸ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order, 15 FCC Rcd 7170, para. 13 (1999); see also *Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979) ("the exercise of quasi-legislative authority by governmental departments and agencies must be rooted in a grant of such power by the Congress and subject to the limitations which that body imposes").

2001 is statutory.²⁹ Because the October 28, 2001 deadline is established by statute, we are without authority to waive it.³⁰

9. ACCORDINGLY: IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Waiver filed by St. Helen School, Howard Beach, New York on April 17, 2002 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey
Deputy Chief, Wireless Competition Bureau



²⁹ 47 U.S.C. § 254(h)(5)(E)(i)(I); see *Federal-State Joint Board on Universal Service - Children's Internet Protection Act*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 8182, paras. 10-14 (2001).

³⁰ We note that United States District Court for the Eastern District of Pennsylvania has recently held the CIPA requirements, as applied to libraries, partially unconstitutional. See *American Library Association, Inc. v. United States*, Nos. CIV.A. 01-1303, CIV.A. 01-1322, 2002 WL 1126046 (E.D. Penn. May 31, 2002). Pursuant to this decision, the Commission has, *inter alia*, directed that Funding Year 2001 library applicants not be penalized for failure to meet CIPA's October 28, 2001 certification deadline. See *Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Order, FCC 02-196 (rel. June 28, 2002) (*CIPA II Order*). However, neither the court's decision nor the Commission's order in any way affected the CIPA obligations of school applicants. See *CIPA II Order*, para. 19.